

Environmental Protection Agency

§ 172.21

§ 172.10 Refusals to issue and revocation.

(a) *Refusal.* At any time that the Administrator determines that an experimental use permit is not justified, or that the issuance of such a permit would cause unreasonable adverse effects on the environment, or that for any other reason provided for under the law a permit shall not be issued, he shall notify the applicant in writing.

(b) *Revocation.* The Administrator may revoke an experimental use permit if he finds that its terms or conditions are being violated or that its terms or conditions are inadequate to avoid unreasonable adverse effects on the environment, or if new evidence is obtained which demonstrates that the tolerance will be inadequate to protect the public health, or for failure to meet any other provision of this part 172. The Administrator will notify the permittee in writing of such revocation. The permittee shall notify all participants of such revocation as soon as possible after he receives notice of revocation. The revocation of a permit shall not preclude the Administrator from initiating civil or criminal sanctions for the violations of the permit conditions or otherwise as authorized by law.

(c) *Hearing.* In the event that an applicant for an experimental use permit wishes to contest the refusal to issue an experimental use permit, or an experimental use permittee wishes to contest the revocation of any such permit, he shall, within twenty days after receipt of notice of such refusal or revocation, file with the Administrator a written request for an opportunity to confer with the Administrator or his designee. Within twenty days after such conference, the applicant or permittee will be notified of the Administrator's final decision.

§ 172.11 Publication.

(a) *Notice of receipt of an experimental use permit application.* The Administrator shall publish notice in the FEDERAL REGISTER of receipt of an application for an experimental use permit upon finding that issuance of the experimental use permit may be of regional or national significance. This notice shall include:

- (1) The active ingredients,
- (2) Use pattern(s),
- (3) Quantity of pesticide,
- (4) Total acreage,
- (5) Location of area of application,
- (6) A statement soliciting comments from any interested persons regarding the application.

(b) *Public hearing.* The Administrator may hold a public hearing, and publish notice in the FEDERAL REGISTER of the date and location of the hearing, when he determines that there is sufficient interest in the application to warrant a hearing, based upon the comments received in response to the Notice of Receipt of an Application, or that a hearing would otherwise be in the public interest.

(c) *Issuance of experimental use permit.* The Administrator shall give prompt notice in the FEDERAL REGISTER of the issuance of an experimental use permit. The notice shall include:

- (1) The active ingredients,
- (2) Use pattern(s),
- (3) Quantity of pesticide,
- (4) Total acreage,
- (5) Location of area of application,
- (6) A statement indicating where the experimental use permit is available for public inspection.

Subpart B—State Issuance of Experimental Use Permits

SOURCE: 44 FR 41787, July 18, 1979, unless otherwise noted.

§ 172.20 Scope.

This subpart sets forth regulations governing State issuance of experimental use permits pursuant to section 5(f) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA). It also sets forth regulations governing authorization by the Administrator of State experimental use permit programs.

§ 172.21 Definitions.

(a) Terms used in this subpart shall, with the exception of those terms defined below, have the meaning set forth in FIFRA and in § 172.1.

(1) *Public or Private Agricultural Research Agency or Educational Institution*—means any organization engaged

in research pertaining to the agricultural use of pesticides, or any educational institution engaged in pesticides research. Any research agency or educational institution whose principal function is to promote, or whose principal source of income is directly derived from, the sale or distribution of pesticides (or their active ingredients) does not come within the meaning of this term.

(2) *Designated State Agency*—means the State agency designated by State law or other authority to be responsible for registering pesticides to meet special local needs.

(b) [Reserved]

§ 172.22 General.

(a) Experimental use permits are not required under this rule in those situations described in §172.3 of subpart A pertaining to Federal experimental use permits.

(b) Subpart B is not applicable to experimental use permits issued by a State, as required by State law, to a permittee who already holds a valid Federal experimental use permit issued under subpart A for the same purpose, or who is not required to obtain a permit under this rule.

(c) Pesticide products used under experimental use permits may not be sold or distributed other than through participants, and, if sold or distributed through participants, may be used only at an application site of a cooperator and in accordance with the terms and conditions of the experimental use permit.

(d) Establishments in which pesticide products under State experimental use permits are produced shall be registered as required by 40 CFR 167.2(a) and producers of such products shall maintain books and records as required by 40 CFR 169.2.

(e) Pesticide products and their containers used under this rule must also be packaged, stored, transported, used, and disposed of in accordance with all applicable Federal laws and regulations, including the Resource Conservation and Recovery Act of 1976 as amended (Pub. L. 94-580; 90 Stat. 2795; 42 U.S.C. 6901 *et seq.*) (RCRA), and rules thereunder.

§ 172.23 State plans.

(a) *Submission.* (1) A State may, by submitting a State plan, request the Administrator to authorize the designated State agency to issue experimental use permits under section 5(f) of FIFRA.

(2) A State shall request authorization to issue experimental use permits by having the Governor or Chief Executive Officer or his designated agent submit a State plan in writing to the Administrator.

(b) *Contents.* A State plan shall include—

(1) A designation of the State agency responsible for the administration of the State experimental use permit program.

(2) An opinion of the State attorney general or the legal counsel of the designated State agency that the State has the requisite legal authorities as set forth in paragraph (c)(1)(i) of this section, accompanied by copies of the applicable State laws and regulations.

(3) A description of procedures that the designated State agency will follow:

(i) To review experimental use permit applications, to ensure that experimental use permits will be issued in accordance with the terms and conditions of the authorization, FIFRA, and this subpart; and

(ii) To supervise use pursuant to the permits, and to ensure that permits are used in accordance with their terms and conditions, FIFRA, and this subpart.

(c) *Criteria for EPA acceptance of State plan.* (1) The Administrator shall grant authorization to issue experimental use permits if the State plan establishes that the designated State agency—

(i) Has adequate legal authority under State law to implement the plan, including authority:

(A) To issue experimental use permits, subject to limitations necessary for the protection of public health and the environment;

(B) To supervise the use of a pesticide pursuant to an experimental use permit, as provided in §172.25(c);

(C) To deny an experimental use permit if it determines that a permit is not justified, or that the issuance of